



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
NATIONAL MARINE FISHERIES SERVICE  
Northwest Region  
7600 Sand Point Way N.E., Bldg. 1  
Seattle, WA 98115

Refer to:  
OSB2000-0076-FEC-RI

June 25, 2001

Mr. Lawrence C. Evans  
Chief, Regulatory Branch  
Corps of Engineers, Portland District  
ATTN: Dave Kurkoski  
P.O. Box 2946  
Portland, Oregon 97232

Re: Consultation on Reissuance of the Corps of Engineers' Regional General Permit for Stream Restoration Activities in Oregon Involving Large Wood and Boulder Placement (Corps No. 2000-0001)

Dear Mr. Evans:

On June 22, 2000, the National Marine Fisheries Service's (NMFS) issued a biological opinion (Opinion)<sup>1</sup> to the Corps of Engineers (Corps) on their issuance of a Regional General Permit (RGP) for stream restoration activities in Oregon involving the placement of large wood and boulders. The Opinion was valid for a one year period, after which an evaluation of the success of the permit in meeting its intent was to be made prior to reissuance and/or modification of permit for subsequent years. The NMFS has met several times with the Corps, U.S. Fish and Wildlife Service (FWS) and the State of Oregon to discuss issues regarding this permit. As a result of these meetings, a proposal to modify the original permit was developed. The NMFS is in receipt of the Corps' request of May 24, 2001 to re-initiate consultation on the reissuance of the RGP as amended.

The Corps proposes to amend the RGP in the following manner:

- a. The expiration date would be extended to June 30, 2005;

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<sup>1</sup> The Opinion addressed Snake River sockeye salmon (*Oncorhynchus nerka*), Snake River spring/summer chinook salmon (*O. tshawytscha*), Snake River fall chinook salmon (*O. tshawytscha*), Lower Columbia River steelhead (*O. mykiss*), Upper Columbia River steelhead (*O. mykiss*), Snake River steelhead (*O. mykiss*), Upper Willamette River steelhead (*O. mykiss*), Middle Columbia River steelhead (*O. mykiss*), Columbia River chum salmon (*O. keta*), Lower Columbia River chinook salmon (*O. tshawytscha*), Upper Willamette River chinook salmon (*O. tshawytscha*), Upper Columbia River spring run chinook salmon (*O. tshawytscha*), Southern Oregon/Northern California coast coho salmon (*O. kisutch*), and Oregon coast coho salmon (*O. kisutch*) and constituted formal consultation for those listed species.

- b. the description of large wood placement activities authorized by the RGP would be modified to specify the minimum wood length in relation to stream width and to allow deviation from the criteria if the permittee obtains approval from the Oregon Department of Fish and Wildlife (ODFW);
- c. the requirement for a cross sectional drawing and plan view of the completed project would be amended to allow the permittee to submit either a cross sectional drawing and plan view, or a written description of the project including specific information;
- d. the reporting date would be changed to fit the reporting date requirement required by the Oregon Watershed Enhancement Board;
- e. the placement of wood and boulders outside of the normal work window would be allowed subject to approval by NMFS, ODFW and FWS;
- f. clarify Condition #14 (sensitive species) to reflect that the RGP does not authorize activities associated with acquiring logs used for placement and that the permittee is responsible for compliance to any laws regarding that acquisition; and,
- g. clarify Condition #18 (compliance inspections) to reflect the terms under which compliance inspections would be carried out.

The Corps determined in their May 24, 2001 letter, that the proposed changes are minor in scope and effect and that the effect analysis and conclusions in the original biological assessment would not be substantially changed. The Corps has requested concurrence from NMFS with this determination.

### **ENDANGERED SPECIES ACT**

The NMFS has reviewed the proposed changes to the RGP, the original Opinion, and the results of monitoring reports supplied by the permittees for activities in 2000. Based on our review of this new information, the NMFS has determined that the proposed reissuance of the Regional General Permit would not affect listed species or designated critical habitat in a manner different from that described in the June 22, 2000, Opinion. Thus NMFS believes that the reissuance of the RGP is not likely to jeopardize the continued existence of the species considered in the original Opinion or destroy or adversely modify designated critical habitat. A new Incidental Take Statement reflecting the proposed changes is attached that provides non-discretionary terms and conditions to minimize the potential for incidental take of listed species.

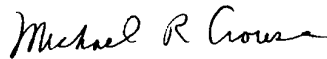
Consultation must be reinitiated if: 1) The amount or extent of taking specified in the Incidental Take Statement is exceeded, or is expected to be exceeded; 2) new information reveals effects of the action may affect listed species in a way not previously considered; 3) the action is modified in a way that causes an effect on listed species that was not previously considered; or, 4) a new species is listed or critical habitat is designated that may be affected by the action (50 CFR 402.16). To reinitiate consultation, the COE should contact the Habitat Conservation Division, Oregon Habitat Branch, of NMFS.

## MAGNUSON-STEVENSON ACT

The NMFS provided Essential Fish Habitat (EFH) conservation recommendations for chinook salmon (*O. tshawytscha*) and coho salmon (*O. kisutch*) as required by the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) as amended (16 U.S.C. 1801 et seq.) as part of the original Opinion. Those recommendations have not changed.

If you have any questions, please contact Ben Meyer of my staff in the Oregon State Branch Office at (503) 230-5425.

Sincerely,



<sup>B.R.</sup> Donna Darm  
Acting Regional Administrator

Enclosure

June 25, 2001

Refer to: OSB2000-0076-FEC-RI

**INCIDENTAL TAKE STATEMENT**  
**Corps of Engineers Regional General Permit**  
**For Placement of Large Wood and Boulders**  
(Permit Number 2000-0001)

Sections 4 (d) and 9 of the ESA prohibit any taking (harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct) of listed species without a specific permit or exemption. Harm is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding, and sheltering. Harass is defined as actions that create the likelihood of injuring listed species to such an extent as to significantly alter normal behavior patterns which include, but are not limited to, breeding, feeding, and sheltering. Incidental take is take of listed species that results from, but is not the purpose of, the Federal agency or the applicant carrying out an otherwise lawful activity. Under the terms of section 7(b)(4) and section 7(o)(2), taking that is incidental to, and not intended as part of, the agency action is not considered prohibited taking provided that such taking is in compliance with the terms and conditions of this incidental take statement.

An incidental take statement specifies the impact of any incidental taking of endangered or threatened species. It also provides reasonable and prudent measures that are necessary to minimize impacts and sets forth terms and conditions with which the action agency must comply in order to implement the reasonable and prudent measures.

**A. Amount or Extent of the Take**

The NMFS anticipates that the action covered by the Opinion has more than a negligible likelihood of resulting in incidental take of listed salmonids because of: 1) The potential to disturb salmonids through increases in noise and turbidity; 2) behavioral changes resulting from increased turbidity and contact (or near contact) with equipment; and 3) potential changes in stream hydrology and hydraulics resulting in lost habitat and changes in behavior of salmonids. Effects of actions such as these are largely unquantifiable and are not expected to be measurable as long-term effects on population levels. Therefore, even though NMFS expects some low level incidental take to occur due to the actions covered by the Opinion, the best scientific and commercial data available are not sufficient to enable NMFS to estimate a specific amount of incidental take to the species itself. In instances such as these, the NMFS designates the expected level of take as "unquantifiable." Based on the information in the BA, NMFS anticipates that an unquantifiable amount of incidental take could occur as a result of the actions covered by the Opinion.

## **B. Reasonable and Prudent Measures**

The NMFS believes that the following reasonable and prudent measures are necessary and appropriate to minimize the likelihood of take of listed fish resulting from implementation of this Opinion. These reasonable and prudent measures would also minimize adverse effects to designated critical habitat.

1. Minimize disturbance to salmonids resulting from turbidity, noise, contact with equipment, gravel compaction and disturbance, and disturbance to the riparian zone by applying permit conditions to avoid or minimize disturbance to riparian and aquatic systems.
2. Ensure a comprehensive monitoring and reporting program is implemented to ensure the programmatic biological opinion is meeting its objective of minimizing the likelihood of take from permitted activities.

## **C. Terms and Conditions**

To be exempt from the prohibitions of section 9 of the ESA, the COE must comply with the following terms and conditions which implement the reasonable and prudent measures described above. These terms and conditions are non-discretionary.

- 1a. Erosion control measures will be undertaken to ensure that turbidity does not exceed 10% above ambient (background) conditions.
- 1b. Project staging shall be done in a way that minimizes the actual time that machinery is operated in the stream. Instream equipment operation shall only occur within the Oregon Department of Fish and Wildlife (ODFW) approved work windows unless otherwise approved by ODFW. If work is to occur outside the work window, an ODFW biologist shall be on site during large wood or boulder placement.
- 1c. Equipment that is used for instream work will be cleaned prior to entering the two-year floodplain. External oil and grease will be removed, along with dirt and mud. Untreated wash and rinse water will not be discharged into streams and rivers without adequate treatment.
- 1d. The Permittee is responsible for containment and removal of any toxicants released. Spills shall be immediately reported to DEQ and ODFW.
- 1e. Access roads and associated staging areas within 150' of the two year floodplain shall be constructed so as to minimize erosion. Temporary access roads and other disturbed riparian areas shall be restored with native vegetation after construction is completed.
- 1f. Unobstructed fish passage must be provided at all times during any restoration activity.
2. The COE shall prepare and submit to NMFS an annual report documenting the results of implementation monitoring of the RGP.